

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHRIMAR SYSTEMS, INC., *et al.*,

Plaintiffs,

v.

ADTRAN INC., *et al.*,

Defendants.

6:15-CV-618-JRG-JDL

Lead Case

Patent Case

Jury Trial Demanded

**CHRIMAR'S OPPOSITION TO DEFENDANTS' MOTION TO
AMEND THE SCHEDULING ORDER TO REOPEN DISCOVERY [ECF 822]**

Chrimar was set to begin trial on January 17, 2017 against Accton Technology Corp., and EdgeCore USA Corp. (collectively, "Accton"), or, in the alternative, against ADTRAN, Inc. ("ADTRAN"). On the eve of trial, on January 15, 2017, Chrimar settled its disputes with Accton and ADTRAN. The two remaining defendants who filed this motion, D-Link Systems, Inc. ("D-Link") and TRENDnet International Inc. ("TRENDnet"), immediately demanded production of the settlement agreements with these two defendants and for permission to reopen discovery and to serve a supplemental report from their damages expert, Mr. Bakewell. D-Link and TRENDnet also demanded that the pretrial conference and trial be postponed until after the final settlement agreements are executed and after their damages expert prepares supplemental reports based on these agreements. Chrimar promptly produced the settlement term sheet with Accton on January 17. However, because Chrimar and ADTRAN do not have a term sheet, Chrimar advised these defendants' counsel that Chrimar did not have something similar to produce related to ADTRAN. Chrimar will produce the final agreements once they are executed. Chrimar expects both final settlement agreements to be executed before February 15, 2017. but cannot guarantee a more specific date by which that will take place.

Chrimar is not opposed to handling these issues in the same manner that the Court treated similar settlement agreements, as set forth in ECF 785. In a similar situation, the Court ordered Chrimar to produce the agreements when they were finalized, and the Court permitted the parties to serve supplemental damages reports limited to those agreements.

Chrimar is opposed to Defendants' request to postpone the trial date until after the final, formal settlement agreements have been produced since that won't be until after February 15. Chrimar of course defers to the Court on when to schedule the final pretrial conference and trial in these two remaining cases. Contrary to the statements in Defendants' motion, their damages expert does not rely on these types of settlement agreements. Rather, Mr. Bakewell takes the position that none of Chrimar's license agreements relating to the patents-in-suit is relevant to a damages analysis. Further, also contrary to the statements in Defendants' motion, Chrimar's damages expert, Mr. Mills, does not rely on all of Chrimar's license agreements. Instead, Chrimar's damages expert only looks to those agreements with a running royalty component. Thus, contrary to Defendants' motion, these agreements are not "highly relevant." Chrimar has produced over 30 license agreements and these are merely two more data points.

Finally, Chrimar respectfully suggests that its settlements with Accton and ADTRAN should not give rise to re-opening discovery on other issues. The parties should be limited to serving supplemental damages expert reports directed only to the recently produced settlement agreements. Accordingly, the Court should treat Defendants' motion in the same manner that the Court treated this issue in ECF 785. To that end, Chrimar is submitting with this opposition a proposed order it believes is consistent with the Court's prior ruling on a similar motion.

January 23, 2017

Respectfully submitted,

/s/ Justin S. Cohen

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on January 23, 2017, in compliance with Local Rule CV-5(a), and has been served on counsel for Defendants via electronic mail.

/s/ Justin S. Cohen

Justin S. Cohen